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                      UNITED STATES DISTRICT COURT
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                    NORTHERN DISTRICT OF CALIFORNIA
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    JOHN BROSNAN,
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               Plaintiff(s),
                                       No. C09-227 BZ
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         v.
                                        ORDER SCHEDULING
                                        JURY TRIAL AND
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    ALVIN FLORIDA, JR., et al.,
                                        PRETRIAL MATTERS
15
               Defendant(s).
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         Following the Case Management Conference, IT IS HEREBY
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    ORDERED that the Joint Case Management Statement is adopted,
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    except as expressly modified by this Order. It is further
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    ORDERED that:
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    1.
         DATES
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    Trial Date: Monday, 5/3/2010, 5 days
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    Pretrial Conference: Tuesday, 4/13/2010, 4:00 p.m.
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    Last Day to Hear Dispositive Motions: Wednesday, 3/17/2010
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    Last Day for Expert Discovery: Friday, 2/5/2010
    Last Day for Rebuttal Expert Disclosure: Friday, 1/29/2010
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    Last Day for Expert Disclosure: Friday, 1/22/2010
28
    Close of Non-expert Discovery: Friday, 1/15/2010
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2. <u>DISCLOSURE AND DISCOVERY</u>

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The parties are reminded that a failure to voluntarily disclose information pursuant to Federal Rule of Civil Procedure 26(a) or to supplement disclosures or discovery responses pursuant to Rule 26(e) may result in exclusionary sanctions. Thirty days prior to the close of non-expert discovery, lead counsel for each party shall serve and file a certification that all supplementation has been completed.

In the event a discovery dispute arises, lead counsel for each party shall meet in person or, if counsel are outside the Bay Area, by telephone and make a good faith effort to resolve their dispute. Exchanging letters or telephone messages about the dispute is insufficient. The Court does not read subsequent positioning letters; parties shall instead make a contemporaneous record of their meeting using a tape recorder or a court reporter.

In the event they cannot resolve their dispute, the parties must participate in a telephone conference with the Court before filing any discovery motions or other papers. The party seeking discovery shall request a conference in a letter filed electronically not exceeding two pages (with no attachments) which briefly explains the nature of the action and the issues in dispute. Other parties shall reply in similar fashion within two days of receiving the letter requesting the conference. The Court will contact the parties to schedule the conference.

3. <u>MOTIONS</u>

Consult Civil Local Rules 7-1 through 7-5 and this

Court's standing orders regarding motion practice. Motions for summary judgment shall be accompanied by a statement of the material facts not in dispute supported by citations to admissible evidence. The parties shall file a joint statement of undisputed facts where possible. If the parties are unable to reach complete agreement after meeting and conferring, they shall file a joint statement of the undisputed facts about which they do agree. Any party may then file a separate statement of the additional facts that the party contends are undisputed. A party who without substantial justification contends that a fact is in dispute is subject to sanctions.

If plaintiff decides to proceed with this case without an attorney, he may wish to consult a manual the Court has adopted to assist *pro se* litigants in presenting their case. This manual is available in the Clerk's Office and online at http://www.cand.uscourts.gov.

Plaintiff is advised that "[a] motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure will, if granted, end your case. Rule 56 tells you what you must do in order to oppose a motion for summary judgment.

Generally, summary judgment must be granted when there is no genuine issue of material fact—that is, if there is no real dispute about any fact that would affect the result of your case, the party who asked for summary judgment is entitled to judgment as a matter of law, which will end your case. When a party you are suing makes a motion for summary judgment that is properly supported by declarations (or other sworn testimony), you cannot simply rely on what your complaint

says. Instead, you must set out specific facts in declarations, depositions, answers to interrogatories, or authenticated documents, as provided in Rule 56(e), that contradict the facts shown in the defendant's declarations and documents and show that there is a genuine issue of material fact for trial. If you do not submit your own evidence in opposition, summary judgment, if appropriate, may be entered against you. If summary judgment is granted, your case will be dismissed and there will be no trial. Rand v. Rowland, 154 F.3d 952, 963 (9th Cir. 1998).

In addition to **lodging** a Chambers copy of all papers, a copy of all briefs shall be e-mailed in WordPerfect or Word format to the following address: bzpo@cand.uscourts.gov.

4. <u>SETTLEMENT</u>

This case is referred to Magistrate Judge Laporte to conduct a settlement conference on November 4, 2009, in conjunction with the conference previously scheduled in Brosnan_v.Florida, C08-5216.

5. PRETRIAL CONFERENCE

Not less than thirty days prior to the date of the pretrial conference, the parties shall meet and take all steps necessary to fulfill the requirements of this Order.

Not less than twenty-one days prior to the pretrial conference, the parties shall: (1) serve and file a joint pretrial statement, containing the information listed in Attachment 1, and a proposed pretrial order; (2) serve and file trial briefs, <u>Daubert</u> motions, motions in limine, and statements designating excerpts from discovery that will be

offered at trial (specifying the witness and page and line references); (3) exchange exhibits, agree on and number a joint set of exhibits and number separately those exhibits to which the parties cannot agree; (4) deliver all marked trial exhibits directly to the courtroom clerk, Ms. Voltz; (5) deliver one extra set of all marked exhibits directly to Chambers; and (6) submit all exhibits in three-ring binders. Each exhibit shall be marked with an exhibit label as contained in Attachment 2. The exhibits shall also be separated with correctly marked side tabs so that they are easy to find.

No party shall be permitted to call any witness or offer any exhibit in its case in chief that is not disclosed at pretrial, without leave of Court and for good cause.

Lead trial counsel for each party shall meet and confer in an effort to resolve all disputes regarding anticipated testimony, witnesses and exhibits. All <u>Daubert</u> motions, motions in limine, and objections will be heard at the pretrial conference. Not less than eleven days prior to the pretrial conference, the parties shall serve and file any objections to witnesses or exhibits or to the qualifications of an expert witness. Oppositions shall be filed and served not less than eleven days prior to the conference. There shall be no replies.

Not less than twenty-one days prior to the pretrial conference the parties shall serve and file requested voir dire questions, jury instructions, and forms of verdict. The following jury instructions from the Manual of Model Civil

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Jury Instructions for the Ninth Circuit (2007 ed.) will be given absent objection: 1.1C, 1.2, 1.6-1.14, 1.18, 1.19, 2.11, 3.1-3.3. Do not submit a copy of these instructions. Counsel shall submit a joint set of case specific instructions. instructions on which the parties cannot agree may be submitted separately. The Ninth Circuit Manual should be used where possible. Each requested instruction shall be typed in full on a separate page with citations to the authority upon which it is based. Proposed jury instructions taken from the Ninth Circuit Manual need only contain a citation to that source. Any modifications made to proposed instructions taken from a manual of model instructions must be clearly indicated. In addition, all proposed jury instructions should conform to the format of the Example Jury Instruction attached to this Order. Not less than eleven days prior to the pretrial conference, the parties shall serve and file any objections to separately proposed jury instructions.

Jury instructions that the Court has given in prior cases may be downloaded from the Northern District website at http:\\www.cand.uscourts.gov. (Instructions are located on the "Judge Information" page for Magistrate Judge Zimmerman). The Court will generally give the same instructions in cases involving similar claims unless a party establishes, with supporting authorities, that the instruction is no longer correct or that a different instruction should be given. CACI instructions generally will be given instead of BAJI instructions.

A copy of all pretrial submissions, except for exhibits,

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shall be e-mailed in WordPerfect or Word format to the following address: bzpo@cand.uscourts.gov. At the time of filing the original with the Clerk's Office, two copies of all documents (but only one copy of the exhibits) shall be delivered directly to Chambers (Room 15-6688). Chambers' copies of all pretrial documents shall be б three-hole punched at the side, suitable for insertion into standard, three-ring binders. Dated: May 19, 2009 Zimmerman United States Magistrate Judge G:\BZALL\-BZCASES\BROSNAN V. FLORIDA\RELATED CASE DOCUMENTS\PRETRIAL SCHEDULING ORDER.wpd

1 ATTACHMENT 1 2 The parties shall file a joint pretrial conference statement containing the following information: 3 (1) The Action. 4 Substance of the Action. A brief description of the 5 substance of claims and defenses which remain to be 6 decided. 7 Relief Prayed. A detailed (B) statement of each party's 8 position on the relief claimed, particularly 9 itemizing all elements of damages claimed as well as 10 witnesses, documents or other evidentiary material to be 11 presented concerning the amount of those damages. 12 13 (2) The Factual Basis of the Action. 14 Undisputed Facts. A plain and concise statement of all relevant facts not reasonably 15 disputable, as well as which facts parties will stipulate 16 for incorporation into the trial record without the 17 necessity of supporting 18 testimony or exhibits. Disputed Factual Issues. A 19 (B) plain and concise statement of all disputed factual issues 2.0 which remain to be decided. 21 (C) Agreed Statement. A statement assessing whether all or part 22 of the action may be presented upon an agreed statement of 23 facts. 2.4 Stipulations. A statement of (D) 25 stipulations requested or proposed for pretrial or trial 26 purposes. 27 (3) Trial Preparation. 28 A brief description of the efforts the parties have

made to resolve disputes over anticipated testimony, exhibits and witnesses. 2 Witnesses to be Called. In (A) 3 lieu of FRCP 26(a)(3)(A), a list of all witnesses likely to be called at trial, other 4 than solely for impeachment or rebuttal, together with a 5 brief statement following each 6 name describing the substance of the testimony to be given. 7 Estimate of Trial Time. An (B) estimate of the number of 8 court days needed for the 9 presentation of each party's case, indicating possible 10 reductions in time through proposed stipulations, agreed statements of facts, or 11 expedited means of presenting 12 testimony and exhibits. 13 Use of Discovery Responses. In (C) lieu of FRCP 26(a)(3)(B), cite 14 possible presentation at trial of evidence, other than solely 15 for impeachment or rebuttal, through use of excerpts from 16 depositions, from interrogatory answers, or from 17 responses to requests for admission. Counsel shall 18 state any objections to use of these materials and that 19 counsel has conferred respecting such objections. 2.0 (D) Further Discovery or Motions. 21 A statement of all remaining motions, including Daubert 22 motions. (4) Trial Alternatives and Options. 23 2.4 (A) Settlement Discussion. A statement summarizing the status of settlement 25 negotiations and indicating 26 whether further negotiations are likely to be productive. 27 Amendments, Dismissals. A statement of requested or 28

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1		proposed amendments to pleadings or dismissals of parties, claims or defenses.
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3	(C)	Bifurcation, Separate Trial of Issues. A statement of whether
4		bifurcation or a separate trial of specific issues is feasible and desired.
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6	(5) Miscellaneous.	
7	or material to	subjects relevant to the trial of the action its just, speedy and inexpensive
8	determination.	
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ATTACHMENT 2 1 **USDC USDC** 2 Case No. CV09-00227 BZ JOINT Exhibit No._____ Case No. CV09-00227 BZ **JOINT** Exhibit No. 3 Date Entered Date Entered 4 Signature _____ Signature _____ 5 6 USDC USDC Case No. CV09-00227 BZ JOINT Exhibit No. Case No. CV09-00227 BZ JOINT Exhibit No. 7 8 Date Entered _____ Date Entered _____ 9 Signature Signature 10 USDC Case No. CV09-00227 BZ PLNTF Exhibit No. _____ USDC Case No. CV09-00227 BZ PLNTF Exhibit No. _____ 11 12 Date Entered _____ Date Entered _____ 13 Signature _____ Signature _____ 14 15 **USDC USDC** Case No. CV09-00227 BZ Case No. CV09-00227 BZ 16 PLNTF Exhibit No. PLNTF Exhibit No. 17 Date Entered _____ Date Entered _____ 18 Signature _____ Signature _____ 19 USDC 2.0 Case No. CV09-00227 BZ **DEFT** Exhibit No. Case No. CV09-00227 BZ **DEFT** Exhibit No. 21 Date Entered _____ Date Entered _____ 22 Signature _____ Signature 23 24 USDC Case No. CV09-00227 BZ DEFT Exhibit No. _____ **USDC** Case No. CV09-00227 BZ DEFT Exhibit No. _____ 25 26 Date Entered _____ Date Entered _____ 27 Signature _____ Signature _____